



# VOLUNTEERING

The recent implementation of a 150 calendar day break in service requirement for all Montana Teachers' Retirement System (TRS) retirees has resulted in a significant number of questions regarding eligibility to provide service on behalf of a TRS employer as a volunteer – i.e. without compensation for the service. This information sheet is intended to clarify TRS's position regarding volunteer service.

## **Did the 150 Day Break in Service Requirement Change the TRS position on Volunteer Service?**

No. It is TRS's long-standing position that the performance of duties and functions by a retiree on behalf of a TRS employer that would otherwise entitle the individual to active participation in TRS is *employment* in a position reportable to TRS, *even if those duties and functions are performed without pay*.

A TRS retiree employed in a position reportable to TRS in a volunteer capacity is subject to all limitations and requirements applicable to postretirement employment, including that:

- ☐ The retiree and employer must report their postretirement employment status to TRS and provide required supporting documentation using the RETIRED MEMBER'S AND EMPLOYER'S NOTICE OF POSTRETIREMENT EMPLOYMENT (TRS FORM 146);
- ☐ The employer must report monthly to TRS the time worked by the retiree and must attribute compensation to the retiree at the rate of pay which would be paid to an active member of TRS performing the same duties and functions;
- ☐ The employer must remit employer contributions to TRS on the attributed compensation of the working retiree;
- ☐ The compensation attributed to the working retiree will be counted against the retiree's postretirement earnings limitation

## **What does the 150 Day Break in Service have to do with uncompensated service after retirement?**

The 150 calendar day break in service requirement is an integral component of the TRS plan provisions which insures that a retiree:

1. has actually terminated employment *and*;
2. has had a bona fide separation from service,

prior to again being employed in a position reportable to TRS as a working retiree, including as a volunteer.

The requirements for termination of employment and a bona fide separation from service in order for a member to be eligible for retirement benefits are requirements imposed on TRS as a tax-qualified pension plan by the IRS. Failure to have plan requirements for termination of employment and a bona fide separation from service, or failure to uniformly apply those plan provisions once they're in place, could result in TRS losing its tax-qualified status.

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The IRS guidance on termination of employment and bona fide separation from service do not make distinctions based on whether or not the individual is being compensated for the service provided. Therefore, if TRS allows a retiree to provide service in a position reportable to TRS, in any capacity – including as a volunteer – during the 150 calendar day break in service requirement, it could be in violation of the IRS requirements.

### **How does an employer determine whether volunteer service should be reported to TRS?**

An individual is employed in a position reportable to TRS if the individual is performing *duties or functions* that would entitle the individual to active participation in TRS. As a simple rule of thumb, a TRS employer should report volunteer service to TRS if:

1. The functions or duties performed by the retiree volunteer were performed by the retiree volunteer as part of their regular functions and/or duties prior to retirement with TRS **or**;
2. The functions or duties performed by the retiree volunteer are functions or duties that the employer pays other employees to perform as active members of TRS.

### **Has TRS asked employers to stop allowing retirees to volunteer?**

No. TRS's position on retirees providing uncompensated service in a position reportable to TRS has not changed. However, the implementation of the requirement for a 150 calendar day break in service as applied to uncompensated service has heightened employers' concern regarding the potential consequences to TRS retirees if the break in service requirement is violated by providing uncompensated services.

TRS's requirements do not prohibit employers from allowing retirees to volunteer their services in positions not reportable to TRS; however, TRS has no control over how individual TRS employers implement requirements regarding TRS retirees performing service for a TRS employer as a volunteer. Some TRS employers have decided not to allow retirees to volunteer, whether in a TRS reportable position or not, during the 150 calendar day break in service period in order to avoid giving rise to any circumstance where a retiree is required to retroactively repay retirement benefits and the employer and employee are required to retroactively pay unpaid contributions.

### **What if I have more questions?**

If a retiree or TRS employer has specific questions about whether specific duties and/or functions are reportable to TRS, please put your questions in writing. We are happy to respond with a written determination so there is no question about what may have been discussed or the response that may have been given.

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